



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/173293

PRELIMINARY RECITALS

Pursuant to a petition filed March 31, 2016, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance (MA), a hearing was held on May 19, 2016, at New Richmond, Wisconsin. A hearing scheduled for April 18, 2016, was rescheduled at the petitioner's request.

The issue for determination is whether the IRIS program correctly seeks to end the Personal Injury Response System as a benefit provided to the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Bureau of Long-Term Support
1 West Wilson

Madison, WI

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of St. Croix County.

2. The petitioner receives medical assistance waiver benefits through the IRIS program.
3. The petitioner's services through IRIS include the Personal Emergency Response System, a means of quickly contacting help in an emergency. The system is not portable, and the petitioner cannot take it with him. It costs \$27.50 per month.
4. The petitioner has and can operate a cell phone.
5. The IRIS program notified the petitioner on March 24, 2016, that it intended to discontinue PERS on April 8, 2016. The benefit has continued during these proceedings.

DISCUSSION

The Bureau of Long-Term Support seeks to end the Personal Emergency Response System (PERS) the petitioner receives through IRIS, an alternative to the Family Care and Partnership programs that allows persons to direct their own care. *IRIS Policy Manual*, § 1.1. PERS allows a person to push one button on a machine to quickly get emergency help. IRIS, which stands for "Include, Respect I Self-Direct," was developed pursuant to a medical assistance waiver Wisconsin obtained under section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act.

The waiver document providing the program's authority is available at <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/list.asp>. The federal government's general guidance for the program is found at 42 C.F.R. § 441.450 – 484. Those regulations require the Department's agent to assess the participant's needs and preferences, and then develop a service plan based on the assessed needs. *Id.*, § 441.466. When determining whether a benefit is needed, "all of the State's applicable policies and procedures associated with service plan development must be carried out..." *Id.* § 441.468. Wisconsin IRIS policies are found online at <https://www.dhs.wisconsin.gov/publications/p0/p00708.pdf>. A related version that provides work instructions is found at <https://www.dhs.wisconsin.gov/publications/p0/p00708a.pdf>.

State regulations require when determining whether a service is necessary, an agency must review, among other things, the medical necessity of the service, the appropriateness of the service, the cost of the service, the extent to which less expensive alternative services are available, and whether the service is an effective and appropriate use of available services. Wis. Admin. Code, § DHS 107.02(3)(e)1.,2.,3.,6., and 7. "Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability;
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and

9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code, § DHS 101.03(96m).

The department contends that the petitioner no longer requires PERS because he has and can operate a cell phone. His mother testified that he has epilepsy and might not be able to operate a telephone during an attack. PERS is easier to operate because, as noted, it requires that he press only one button. PERS costs \$27.50 a month, a price low enough that if it provides a significant benefit it is justified. I understand that the PERS device might be slightly easier to operate in an emergency than a cell phone, but this is more than offset by the fact that the device is not portable. He keeps it in his kitchen. This means that unless he has a seizure within reach of it in his kitchen, it will be more rather than less difficult to obtain help with PERS than it is with a cell phone. There is a watch available that would make PERS portable, but he refuses to wear one. Given these facts, the device is not medically necessary. Therefore, the IRIS program correctly seeks to end this service.

CONCLUSIONS OF LAW

The PERS service the petitioner receives through the IRIS program is not medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 19th day of May, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 19, 2016.

Bureau of Long-Term Support